IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

WEDNESDAY, THE 14TH NOVEMBER 2007 / 23RD KARTHIKA 1929

WP(C).No. 1301 of 2004(E)

PETITIONER:

C.SREEDHARAN,
EX-G.O. 109 EE (C), "SAFIRE", P.O. DHARMADAM,
THALASSERY, KANNUR DISTRICT.

BY ADV. SRI.C.P.KUNJHIKANNAN
SMT.VIDHYA. A.C
SRI.A.C.VENUGOPAL

RESPONDENTS:
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1. **THE PRINCIPAL CHIEF CONTROLLER OF DEFENCE ACCOUNTS (P), ALLAHABAD.**

2. **THE DIRECTORATE GENERAL OF BORDER ROADS, HEADQUARTERS, SEEMA SADAK BHAVAN, RING ROAD, DELHI CANTT., NEW DELHI-110 010.**

BY ADV. SRI.JOHN VARGHESE, ASSISTANT SG
SRI.P.PARAMESWARAN NAIR,ASST.SOLICITOR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.1301/2004

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE JUDGMENT OF THE CENTRAL ADMINISTRATIVE TRIBUNAL MADRAS BENCH IN OA. 340/02 AND OA. 341/02.

EXT.P2:- COPY OF THE REPRESENTATION DT. 9.1.03 OF THE PETITIONER TO THE 2ND RESPONDENT.

EXT.P3:- COPY OF THE LETTER DT. 31.1.03 OF THE 2ND RESPONDENT TO THE PETITIONER.

EXT.P4:- COPY OF THE LETTER DT. 14.2.03 OF THE PETITIONER TO THE 2ND RESPONDENT.

EXT.P5:- COPY OF THE REMINDER LETTER DT. 3.4.03 OF THE PETITIONER.
EXT.P6:- COPY OF THE LETTER DT. 23.4.03 OF THE 2ND RESPONDENT TO THE PETITIONER.

EXT.P7:- COPY OF THE LETTER DT. 2.5.03 OF THE PETITIONER TO THE 2ND RESPONDENT.

EXT.P8:- COPY OF THE LETTER DT. 23.5.03 OF THE 2ND RESPONDENT TO THE PETITIONER.

EXT.P9:- COPY OF THE LETTER DT. 8.8.03 OF THE 2ND RESPONDENT TO THE PETITIONER.

EXT.P10:- COPY OF THE LETTER DT. 29.7.03 OF IST RESPONDENT.

EXT.P11:- COPY OF THE LETTER DT. 25.8.03 OF THE PETITIONER TO THE 2ND RESPONDENT.

EXT.P12:- COPY OF THE LETTER DT. 24.9.03 OF THE 2ND RESPONDENT TO THE PETITIONER .

EXT.P13:- COPY OF THE LETTER DT. 10.10.03 OF THE 2ND RESPONDENT TO THE PETITIONER.

EXT.P14:- COPY OF THE LETTER DT. 21.10.03 OF THE PETITIONER TO THE 2ND RESPONDENT.

EXT.P15:- COPY OF THE LETTER DT. 17.11.03 OF THE 2ND RESPONDENT TO THE PETITIONER.

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EXT.P16:- COPY OF THE LETTER NO.GI/C/GREF/42466/MISC/VI DT. 11.12.03 OF THE IST RESPONDENT TO 2ND RESPONDENT.

RESPONDENTS EXHIBITS

EXT.R1(a):- COPY OF THE GAZETTE NOTIFICATION DT. 10.9.83.

EXT.R1(b):- COPY OF THE RULE 48 A OF THE CCS PENSION RULES.

/TRUE COPY/

P.S. TO JUDGE

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V.GIRI, J.

W.P.(C).No.1301 of 2004 E

Dated this the 14th day of November, 2007.

JUDGMENT

Petitioner, who was working as Executive Engineer in the General Reserve Engineers Force, from 19.11.1955 to 30.3.1983, retired from service on 30.3.1983 on voluntary retirement, after putting in 23 years and 4 months service. He was granted another one year, 8 months and 5 days of service for the purpose of calculating his pensionable service. According to the petitioner, he is entitled to the benefit of Rule 48 B of CCS (Pension) Rules **{for short "the Rules"},** which was introduced by a notification issued on 26.9.1983, which apparently takes effect from 10.9.1983. Under Rule 48B of the Rules, qualifying service as on the date of intended retirement of government servant retiring under Rule 48(1)(a) or 48 A shall be increased not exceeding 5 years, subject to the condition that the total qualifying service does not exceed 33 years. According to the petitioner, he, therefore, was entitled to weightage of 5 years which had to be added to the service rendered by him. His claim was rejected under

Ext.P10 and subsequently reiterated in Ext.P16. The said orders are under challenge.

2. Learned counsel for the petitioner relies on Ext.P1 judgment wherein the Central Administrative Tribunal had declared that the weightage under rule 48B of the Rules would be made applicable to the petitioners therein by virtue of the latest pension policy introduced as per the Government notification dated 22.10.1983.

3. In the counter affidavit filed by the Government, it is contended that the judgment of the Central Administrative Tribunal may not be made applicable to the case of the petitioner, inasmuch as, Rule 48B is applicable only with effect from 26.9.1983. It is contended that the petitioner retired on 30.3.1983 and hence, the benefits are not applicable to him. With regard to Ext.P1, all that the counter affidavit says is that the contention of the petitioner that the Central Administrative Tribunal has held that the benefits of the liberalized pension scheme Will be applicable with effect from 1.1.1979 is incorrect on the premise that the Central Administrative Tribunal has not stated it

has got retrospective effect. Petitioner's claim for weightage in terms of Rule 48B of the Rules as also the benefit of Ext.P1 judgment of the Central Administrative Tribunal was rejected under Ext.P10 on the premise that the petitioner is not a party to the said original application.

4. In my view, the respondents should reconsider the case of the petitioner with reference to the Government notification dated 22.10.1983 and also with reference to the fact as to whether the dictum laid down in Ext.P1 judgment passed by the Central Administrative Tribunal has been accepted by the Central Government. If the respondents find that the liberalized pension scheme brought about under the Government notification dated 22.10.1983 is applicable to the case of the petitioner, then the further question to be looked into is whether the weightage under Rule 48B of the Rules is to be made applicable to persons who have retired before 31.3.1983.

In the circumstances, Exts.P10 and P16 are set aside. The first respondent shall reconsider the petitioner's case in accordance with law and pass

fresh orders within six months from the date of receipt of a copy of this judgment.

Sd/-
(V.GIRI)
JUDGE

sk/

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